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December 31, 2007

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VIA ELECTRONIC MAIL ONLY

Re: Defendants' consolidated Rule 30(b)(6) deposition topics

Dear Leslie:

We have reviewed the Defendants' combined Rule 30(b)(6) deposition notices to the State. The State has the following comments and objections to that notice.

First, the State objects to the Defendants' attempted division of its Rule 30(b)(6) topics into twelve separate notices. The State reserves the right to group related topics into fewer than twelve depositions and to provide witnesses prepared to testify on topics requested in more than one of Defendants' separately numbered "Notices" in a single deposition. Where appropriate, the State will make a Rule 30(b)(6) deponent available on consolidated "Notices" for more than one seven hour day. We will discuss such timing matters with you at a later date. We will give counsel for the Defendants reasonable notice as to the topics to be consolidated into a single deposition.

A party requesting a 30(b)(6) deposition must "describe with reasonable particularity the matters on which examination is requested." Fed. R. Civ. P. 30(b)(6). "[T]o allow the Rule to effectively function, the requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute." *EEOC v. Thorman & Wright Corp.*, 2007 WL 1638602 (D. Kan., June 5, 2007). The obvious purpose of the painstaking specificity requirement is to ensure that the party receiving a 30(b)(6) notice and that party's counsel can adequately prepare the corporate designee(s) to testify about the subject matters on which that party will be questioned. See e.g., *Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 442, 444 (D. Kan. 2000) ("Where the defendant cannot identify the outer limits of the area of inquiry noticed, compliant designation is not feasible.") The areas of inquiry in your deposition notices are overly broad and lack the particularity necessary to permit the State and its counsel adequately to prepare corporate designees for these depositions. Given the generalized descriptions in the

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notices, you should expect that the corporate designee will only be able to provide generalized answers. If you intend to inquire about more specific matters related to any of these topics, you should specifically identify those more narrow or specific area of interest. Otherwise, you should expect that there will be many specific questions on which the corporate representatives likely will not be prepared to testify.

For instance, a number of your subject areas are overbroad (e.g., "[t]he location and ownership of every parcel of real property that You allege was harmed or impacted by the actions of each Defendant or that Defendant's contract growers" or "[t]he names and contact information of all persons known or alleged by You to have factual information relevant to Topics 1-4 and Your understanding of the substance of such persons' knowledge"). Consistent with the State's knowledge, the State's witnesses may accordingly, in response to such overbroad subject areas, refer examining counsel to documents you have already reviewed in response to some questions. For example, the State will refer you to records in response to a subject area like, "[t]he location and ownership of every parcel of real property that You allege was harmed or impacted by the actions of each Defendant or that Defendant's contract growers." If, of course, there is some particular parcel about which you have a question, please advise us at least two weeks in advance of the deposition, and we will endeavor to prepare the witness to speak on such specifics.

It appears that the topics in the Defendants' list are merely a repackaging of the various Defendants' interrogatories and requests for production. To the extent that the Defendants are seeking to compel to the State to provide again information that it has already provided to Defendants in written discovery, the State objects on the grounds that the depositions are cumulative and duplicative of prior discovery. See, e.g. *Evans v. Allstate Ins. Co.*, 216 F.R.D. 515, 519 (N.D. Okla. 2003) (30(b)(6) depositions seeking to compel corporate designees to testify about matters which have already been answered by responses to prior written discovery responses are unduly burdensome and cumulative); *SmithKline Beecham v. Apotex Corp.*, 2000 WL 116082 (N.D. Ill., May 11, 2000) (party requesting a 30(b)(6) deposition has the burden of proving that the information it seeks has not already been produced or could not be discovered by a less invasive method)

The State further objects to the extent that the topics are broad enough to seek information protected from discovery and privileged by reason of the attorney-client communication privilege, the work-product doctrine or the protection afforded consultants who have not been designated as testifying experts.

In those instances in which the State has no knowledge, even after reasonable inquiry, the witness will so inform you. In those instances in which the subject matter of a topic is still under study by the State's consultants and no definitive response is currently possible, such as a calculation of damages, the State's witness will so inform you.

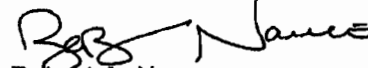
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Additionally, consistent with the State's knowledge and the theory of its case, the State's witness may not be able to respond to some topics with the specificity desired by the Defendants, but will nevertheless describe the State's evidence on the topic areas requested.

In certain instances, the Court has already ruled on the scope of some of the topic areas, such as the location and use of real property owned or leased by the State in the IRW. The State's witness will testify consistent with the Court's rulings on such issues. The State specifically objects as irrelevant, overly broad, and unduly burdensome to a requirement to educate its witness and testify as to County-owned highways, roads, or rights of way (Notice 6, Topic 1).

Given the number of depositions already scheduled in this case, we anticipate we will produce the State's first Rule 30(b)(6) witnesses in late January, or early February. We understand you wish to examine on the topics you have grouped under Notices 1 and 2 first, and we will accommodate you on this. Please advise us of some dates in late January or early February in which the Defendants would be able to take depositions encompassing topics in their Notices 1 and 2. Should the State combine other topics with those under your Notices 1 or 2 and designate a witness or witnesses for additional topics in a single deposition, we will notify you a reasonable time in advance of such a deposition so that examining counsel may prepare.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bob Nance", written over the typed name.

Robert A. Nance
For the Firm

cc: Kelly Burch, Esq.
Trevor Hammons, Esq.